

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 92-573-W/S - ORDER NO. 93-251  
MARCH 12, 1993

IN RE: Application of Keowee Key Utilities, )  
Inc. for Approval of the Transfer of ) ORDER  
the Water and Sewer Facilities, ) DENYING  
Territory and Certificate of Keowee ) TRANSFER  
Key Subdivision from Realtec, Inc. )

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application of Keowee Key Utilities, Inc. (KKUI or the Company) and Realtec, Inc. (Realtec) requesting approval of the transfer of the water and sewer facilities, territory, and certificates of Keowee Key Subdivision from Realtec. The October 15, 1992 Application was filed pursuant to S.C. CODE ANN. Vol. 26, R.103-504 and R.103-704.

By letter dated October 28, 1992, the Commission's Executive Director instructed the Company to publish a prepared Notice of Filing in newspapers of general circulation, one time, in the affected area. The Notice of Filing indicated the nature of the Company's Application and advised all interested parties desiring participation in the scheduled proceeding of the manner and time in which to file the appropriate pleadings. The Company was likewise instructed to notify directly all customers affected by the proposed transfer.

Petitions to Intervene were filed by Frank L. Kennard, the Lake Keowee Property Owners' Association (LKPOA), and the Consumer Advocate for the State of South Carolina (Consumer Advocate).

A public hearing relative to the matters asserted in the Company's Application was held on February 4, 1993 in the Hearing Room of the Commission at 111 Doctors Circle, Columbia, South Carolina. Mitchell Willoughby, Esquire, and B. Craig Collins, Esquire, represented the Applicant, Keowee Key Utilities, Inc.; Lowell W. Ross, Esquire, represented the Co-Applicant, Realtec, Inc.; Frank L. Kennard appeared pro se; the Lake Keowee Property Owners' Association was represented by M. John Bowen, Jr., Esquire; the Consumer Advocate for the State of South Carolina was represented by Carl F. McIntosh, Esquire; and the Commission Staff was represented by F. David Butler, General Counsel.

Realtec, Inc. presented the testimony of Gary L. Steadman, Executive Vice President and General Counsel, for Realtec, Inc.. Steadman discussed Realtec's history with the Keowee Key Development, and also discussed Realtec's desire to sell the water and sewer utilities and the rationale for doing so. The testimony of Steadman showed that the recessionary economic conditions prevalent in the United States in the last few years have impacted Realtec and the development industry in general. As a result, Realtec's access to capital is now considerably more limited than it has been in the past and Realtec is, therefore, unable to subsidize the utility operations as it has done in the past. Realtec also states that it has no management expertise or long

term experience as a utility operator, that Realtec has sold its North Carolina Utility assets and the Keowee Key water and sewer system in the only remaining utility. Realtec's management, according to Steadman, feels that the utility customers will be best served if the system is owned and operated by experienced professionals who are in the utility business on a full time basis, i.e., Keowee Key Utilities, Inc.

Keowee Key presented the testimony of Carl J. Wenz and Carl Daniel. Carl J. Wenz is Director of Regulatory Accounting for Keowee Key Utilities, Inc. which is a subsidiary of Utilities, Inc. Wenz discussed benefits available to the Keowee Key residents from KKUI's ownership of the water and sewer facilities, and also the Company's willingness and ability to serve the Keowee Key development. Wenz testified that KKUI called for economies of scales in such areas as operating personnel administration and other areas and that the Company desire to own the system now owned by Realtec. Wenz further testified that KKUI has been operating the Keowee Key system under a management agreement since early 1992, and that in his opinion there is not an alternative owner that stands ready to provide the same level of service that KKUI will provide.

KKUI also presented the testimony of Carl Daniel, Vice President and Regional Director of Operations for Carolina Water Service, Inc. of North Carolina. Daniel testified that when it assumed operation of the water and wastewater systems at Keowee Key, that the Company has been extremely busy completing many

improvements to the system, including an attempt to lower the unaccounted for water which is presently a problem on the system. Daniel stated that his Company was a professional utility management company with ready access to capital, and desired to own the water and sewer systems at Keowee Key.

The Intervenor, Frank L. Kennard, testified as did Nedra L. Van Gombos for the Lake Keowee Property Owners' Association. Both Kennard and Van Gombos pointed to several legal problems that exist that, in their opinion, should be settled prior to any transfer from Realtec to Keowee Key Utilities, Inc. First, both witnesses pointed out that a number of "reserved areas" exist on the property, some of which contain utility facilities. At this time, Realtec, Inc. proposes to sell to KKUI the utility assets which are contained on these reserve areas. Kennard and Van Gombos point out, however, that under the protective covenants on file in the Oconee County Courthouse, transfer of any reserved area requires the approval of the property owners, and that the property owners have not approved the transfer of such areas in this case. Further, both witnesses point to the fact that a number of the utility facilities are located on or near the Keowee Key Golf Course. Van Gombos stated that "The utility system is intrinsically bound into our community." Kennard also pointed out, for example, that wastewater lines lie on holes number 6 and 12, which means that 12 fairways contain the utility facilities of the golf course. Witnesses Kennard and Van Gombos further point to the non-account water problem, the lack of use of one (1) well and

certain other factors in opposing the transfer in this case.

This is the second time that a request for transfer from Realtec to Keowee Key Utilities, Inc. has come before this Commission. Our Order No. 92-698, dated September 2, 1992, denied the transfer on the basis of objections to the asset purchase agreement, and the fact that the actual sale was consummated, and the closing held months prior to permission being sought from the Commission to transfer the utility system. The Regulations provide in pertinent part that:

No existing public utility providing sewerage disposal to the public or any individual, corporation, partnership, association, establishment or firm undertaking the construction or acquisition of a utility shall hereafter sell, acquire, begin the construction or operation of any utility system, or any extension thereof, without first obtaining from the Commission a certificate to the sale or acquisition is in the public interest, or that public convenience and necessity require, or will require construction or operation of any utility system, or extension...

R.103-504

No existing public utility providing sewerage disposal to the public or any individual, corporation, partnership, association, establishment or firm undertaking the construction or acquisition of a utility shall hereafter sell, acquire, begin the construction or operation of any utility system, or any extension thereof, without first obtaining from the Commission a certificate to the sale or acquisition is in the public interest, or that public convenience and necessity require, or will require construction or operation of any utility system, or extension...

R.103-704

Featured prominently in these regulations is the term "public interest." "Public interest" is defined as something in which the public, the community at large, has some pecuniary interest, or

some interest by which their legal rights or liabilities are affected. "Public" is pertaining to a whole community or affecting the whole body of people. Black's Law Dictionary and Goldberg v. Barger, 37 Cal. App. 3d 997, 112 Cal. Rptr. 827, 833 (1974) case.

It appears to this Commission that the public interest demands that the transfer application in this case be denied. While the testimony of the Realtec and KKUI witnesses certainly shows that Realtec should transfer the systems, and that KKUI is qualified to operate and maintain the systems, the testimony of Kennard and Van Gombos show that the residents of Keowee Key vehemently oppose the transfer. Second, the "reserve area" problem and the fact that numerous utility facilities are located on golf course property owned by the Property Owners Association to us raises the question of the legality of the transfer of the property in the first place. We believe that the failure of Realtec, Inc. to have sought easements on the golf course property to service a utility facility constitutes a potential cloud on the title of the property, which may only be settled by a court of law. Even if the problem is settled, however, the Commission believes that the utility system is indeed, intrinsically bound into the community, as witness Van Gombos stated, and easements would not solve the fact that many of the holes on the development golf course have utility property beneath them and on them. Further, the status of the reserve areas pointed to by the residents also presents a potential cloud on the title which must be elucidated. These potential problems with the title of the land, the placement of many of the utility facilities

on and under the golf course, plus the overwhelming opposition of the residents of Keowee Key to the transfer mandate that we deny once again the application for transfer.

Both the testimony of Kennard and Van Gombos indicates a desire of LKPOA to be considered as a purchaser of the system presently owned by Realtec, Inc. As Van Gombos stated, "The utility system is intrinsically bound into our community." Whereas a transfer to the LKPOA is not before this Commission, we believe that Realtec, Inc. should negotiate a possible transfer of the systems to the LKPOA. It appears to this Commission on first glance (subject to a full hearing) that the LKPOA has members with experience in the utilities and finance field, and that considerable capital resources are available to them. Also, the members of the LKPOA who appeared before this Commission seem to have an overwhelming desire to own and operate the systems. Because of the above-stated reasoning,  
IT IS THEREFORE ORDERED THAT:

1. The Application for transfer of the water and sewer facilities of Keowee Key from Realtec, Inc. to Keowee Key Utilities, Inc. is hereby denied.

2. Realtec, Inc. is encouraged to negotiate the transfer to the Lake Keowee Property Owners' Association.

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3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)